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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,348	02/28/2002	Amanda Sara Hewett	602-1562	7081

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EXAMINER

PIASCIK, SUSAN L

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 02/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/070,348

Applicant(s)

HEWETT ET AL.

Examiner

Susan L Piascik

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 24 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Applicant claims a cage or cage furniture formed *preferably* from molding and *preferably* as a single component. The presence of the word “preferably” prevents the limitations from being positively claimed. Therefore, no patentable weight has been given to these particular limitations.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 21-24, 27, 35, and 37-39 are rejected under 35 U.S.C. 102(a) as being anticipated by the SuperPet internet reference.

In regards to **claim 21**, SuperPet teaches a cage or an item of cage furniture for use by a caged rodent. The cage or item of furniture comprises a material, which is transparent or

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translucent to a human observer but is perceived as being substantially darkened or opaque by the caged rodent.

Regarding **claim 22**, SmartPet teaches a cage or an item of furniture for use by a caged rat or mouse.

In regards to **claim 23**, SmartPet teaches a cage or an item of furniture wherein the cage or item of furniture is substantially or entirely formed from a substance which is transparent or translucent to a human observer but substantially darkened or opaque to the caged animal.

Regarding **claim 24**, SmartPet teaches a cage or item of furniture wherein the cage or item of furniture is formed entirely from a synthetic plastics material.

In regards to **claim 27**, SmartPet teaches a cage or an item of furniture wherein the cage or the item of cage furniture comprises colored material.

Regarding **claim 35**, SmartPet teaches a cage or an item of furniture provided with fixing means to restrict the movement of the item of cage furniture within the cage.

In regards to **claim 37**, SmartPet teaches a method of making a cage or an item of cage furniture. The method comprises the step of forming the cage or cage furniture from a material which is transparent or translucent to a human observer, but is perceived as being substantially darkened or opaque by a caged rodent.

In regards to **claim 38**, SmartPet teaches a method of making a cage or an item of cage furniture. The method comprises the step of forming the cage or cage furniture from a material which is transparent or translucent to a human observer, but is perceived as being substantially darkened or opaque by a caged rodent. The performance of the method results in production of a cage or an item of cage furniture in accordance with claim 21.

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Regarding **claim 39**, SmartPet teaches a cage or an item of cage furniture formed by the method of claim 37.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25-26, 34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over SmartPet.

In regards to **claim 25 and 26**, SmartPet teaches a cage or item of furniture wherein the material comprising the cage or cage furniture is a plastic material. However, SmartPet does not specify the type of plastic used for the cage. However, it would have been obvious to one having ordinary skill in the art at the time of the invention to select a plastic (polysulfone, polytherimide, and/or polycarbonate) capable of being autoclaved, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of design choice. *In re Leshin*, 125 USPQ 416.

In regards to **claim 34**, SmartPet teaches a substantially triangular shelter (see Safari Hut). However, the shelter is not floorless. SmartPet also teaches a shelter that is floorless (see mini-igloo). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the triangular shelter to incorporate the floorless feature of the

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igloo-shaped shelter, so that the animal may still be in contact with the bedding or woodchips found in the bottom of larger cage when resting in the shelter.

Regarding **claim 36**, SmartPet teaches the claimed invention except for specifying two entrances to the cage furniture. However, it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art (*St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8). Therefore, one having ordinary skill in the art at the time of the invention would have found it obvious to add another entrance to the cage furniture to allow more than one animal to enter the structure.

Claims 28 and 29-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over SmartPet in view of the PetCo ad.

Regarding **claim 28**, SmartPet fails to show a cage or cage furniture comprising a red-colored or red-tinted material. However, as shown in the PetCo ad it is well known in the art to use a red color material in pet housings. Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the cages/furniture disclosed by SmartPet to comprise a red colored material, as shown by PetCo and various other pet cage manufacturers, as a matter of design choice and in order to appeal to the senses of animals.

In regards to **claims 29-33**, SmartPet, as modified, fails to disclose the percentage of visible light transmitted through the cage material as well as the wavelengths of the visible light to which the cage is exposed. However, it would have been obvious to one having ordinary skill in the art at the time of the invention to determine these particular values, since it has been held

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that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Citation of Relevant Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patent is cited to further show the state of art with respect to pet cages and cage furniture:

U.S. Pat. No. 1,948,601 to Thomas

U.S. Design Pat. No. 244,949 to Welker

U.S. Pat. No. 4,696,259 to Fewox

U.S. Pat. No. 4,940,017 to Niki et al.

U.S. Pat. No. 5,474,025 to Lee

U.S. Design Pat. No. 379,683 to Deitrich et al.

U.S. Pat. No. 5,664,525 to Phillips et al.

U.S. Pat. No. 5,862,778 to Matsumota

U.S. Pat. No. 6,123,047 to Sakai

Great Britain Pat. No. 2,148,087 to Robbins

Internet references: www.allpets.com; www.petsmart.com

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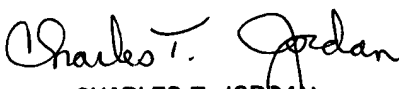
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan L Piascik whose telephone number is (703)305-0299. The examiner can normally be reached on M-F (8:00-5:30) First Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703)308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-7687 for regular communications and (703)305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)305-7687.

slp
February 24, 2003


CHARLES T. JORDAN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600